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Attorneys for Plaintiff United States of America

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)	Civil Action No. 3:17-cv-00302-MMD-WGC
)	
Plaintiff,)	
)	FIRST AMENDMENT TO THE
v.)	CONSENT DECREE
)	
NEVADA CEMENT COMPANY)	
)	
Defendant.)	
_____)	

1 WHEREAS, the United States of America, on behalf of the United States Environmental
2 Protection Agency (herein "U.S. EPA" or "EPA") and Nevada Cement Company ("Nevada
3 Cement Company") are parties to a Consent Decree filed with this Court on October 4, 2017
4 ("Consent Decree");
5

6 WHEREAS, the Consent Decree presently in effect requires Nevada Cement Company to
7 install "selective non-catalytic reduction controls" ("SNCR Control Technology" or "SNCR") to
8 achieve an unspecified degree of NO_x emissions reductions within a specified timeframe;
9

10 WHEREAS, the Parties now wish to amend the Consent Decree to address newly
11 available technology that can achieve more certain, faster, and likely \greater NO_x emission
12 reductions than SNCR Control Technology, which the Parties have agreed to address through
13 revisions to certain paragraphs in the Consent Decree dealing with permissible NO_x emission
14 control technology, and other related provisions;
15

16 WHEREAS, the Parties desire to amend the Consent Decree to make clear that Nevada
17 Cement Company has the option to install and utilize either Catalytic Filter Bags or SNCR
18 Control Technology;
19

20 WHEREAS, the Consent Decree specifies that the Court retains continuing jurisdiction
21 for the purpose of enforcing and modifying the Consent Decree;
22

23 WHEREAS, Paragraph 100 (Section XXII) of the Consent Decree provides that any
24 material modifications to the Consent Decree shall be agreed to in writing by the EPA and
25 Nevada Cement Company, and shall be effective only upon approval by the Court;
26

27 WHEREAS, the EPA and Nevada Cement Company have each reviewed and hereby
28 consent to this First Amendment to the Consent Decree;

1 WHEREAS, the Parties recognize that this First Amendment to the Consent Decree has
2 been negotiated by the Parties in good faith and that this First Amendment to the Consent Decree
3 is fair, reasonable, and in the public interest.

4 NOW, THEREFORE, the EPA and Nevada Cement Company hereby agree that the
5 Consent Decree shall remain in full force and effect in accordance with its terms, except as set
6 forth in this First Amendment, which shall become effective upon entry by this Court.
7

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9
10 **AMENDED CONSENT DECREE PROVISIONS**

11 This First Amendment to the Consent Decree amends paragraph 8(n) of Section III
12 (Definitions) and adds a new definition. It also amends paragraphs 11 and 12 in Section V (NOx
13 Control Technology, Emission Limits and Monitoring Requirements). Finally, it makes
14 amendments to Appendix A (Test-And-Set Protocol For NOx Emission Limit) in paragraph 1 of
15 Section I (Scope and Applicability), paragraph 2 of Section II (CEMS Installation and
16 Operation), and paragraph 2 of Section III (Baseline Collection Period).
17

18
19 **AMENDMENTS TO SECTION III: DEFINITIONS**

- 20 1. The following definition of “Catalytic Filter Bags with Ammonia Injection” or
21

22 “Catalytic Filter Bags” is to be added to paragraph 8 in alphabetical order:

23 “Catalytic Filter Bags with Ammonia Injection” or “Catalytic Filter Bags”

24 shall mean a filter with a unique embedded catalyst structure, enabling a

25 single bag to remove NOx and dust in a single step process when ammonia is
26 injected into the baghouse.
27
28

- 1 2. The definition of “Control Technology” or “NO_x Control Technology” in Paragraph
2 8(n) is amended and superseded to read as follows:

3 “Control Technology” or “NO_x Control Technology” shall mean Catalytic
4 Filter Bags with Ammonia Injection, Selective Non-Catalytic Reduction or
5 Low-NO_x Burner technology;

6
7
8 **AMENDMENTS TO SECTION V: NO_x CONTROL TECHNOLOGY, EMISSION**
9 **LIMITS AND MONITORING REQUIREMENTS**

- 10 3. NO_x Control Technology and Emissions Limits. Paragraph 11 of Section V is
11 amended and superseded to read as follows:

12 11. Defendant shall install and Continuously Operate either SNCR Control
13 Technology or Catalytic Filter Bags with Ammonia Injection on each Kiln to
14 reduce NO_x emissions. If Defendant elects to install Catalytic Filter Bags;

15 a. Defendant shall collect baseline NO_x emissions data for the first 90
16 days of the baseline collection period as required under Section III of
17 Appendix A and, within 30 days of the end of such 90-day period,
18 shall propose to EPA a 30-Day Rolling Average Emission Limit for
19 NO_x equal to a 50% reduction in the mean of the 30-Day Rolling
20 Average Emission Rates calculated from the 90 days of baseline
21 emissions data.

22 i. The 30-Day Rolling Average Emission Limit for NO_x for each
23 Kiln shall be based upon an analysis of CEMS data and clinker
24 production data collected during the 90-day period.
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1 ii. Hours or days when there is no Kiln Operation may be
2 excluded from the calculation. However, Defendant shall
3 provide an explanation in its proposal to EPA for any data
4 excluded.

5
6 b. If Defendant elects to utilize Catalytic Filter Bags, Defendant shall
7 install Catalytic Filter Bags on each Kiln, and comply with the 30-Day
8 Rolling Average Emission Limit for NO_x by April 1, 2019. If EPA
9 disapproves the Proposed 30-Day Rolling Average Emission Limit for
10 NO_x, Defendant shall comply with Defendant's proposed 30-Day
11 Rolling Average Emission Limit for NO_x pending the resolution of
12 any dispute resolution process that ensues.

13
14 c. If Defendant elects to install Catalytic Filter Bags, the remaining
15 paragraphs of this Section V and Appendix A (except for Sections II
16 and III) shall not apply.

17
18 d. Defendant may, after installation of the Catalytic Filter Bags, elect to
19 forego use of Catalytic Filter Bags and to install SNCR Control
20 Technology instead. Defendant must provide written notice of such
21 election by April 1, 2019.

22
23 e. If Defendant elects to forego use of Catalytic Filter Bags per paragraph
24 11.d., Defendant shall comply with the terms and conditions of
25 Paragraphs 12 - 21 of Section V and the requirements of Appendix A
26 to establish 30-Day Rolling Average Emission Limits for NO_x
27 applicable to each Kiln in lieu of the 30-Day Rolling Average
28

1 Emission Limit for NO_x submitted by Defendant in paragraph 11.a. In
2 such case, Defendant shall not be obligated to meet the 30-Day Rolling
3 Average Emission Limit for NO_x submitted by Defendant in paragraph
4 11.a.
5

- 6 4. SNCR Control Technology. Paragraph 12 of Section V is amended and superseded to
7 read as follows:

8 12. If Defendant elects to install SNCR Control Technology, Defendant shall
9 comply with all terms and conditions of Paragraphs 12 - 21 of Section V and
10 the requirements of Appendix A, including the timeframes, drafting submittals
11 and complying with protocols set forth in Appendix A, to establish 30-Day
12 Rolling Average Emission Limits for NO_x applicable to each Kiln.
13
14

15 **AMENDMENTS TO SECTION XIX: NOTICES**
16

- 17 5. Notification to EPA by USPS Mail. Paragraph 95 of Section XIX is amended by
18 striking the address for EPA headquarters and inserting:

19 “When submitting documents by carrier such as Federal Express or UPS use the
20 following address (preferred):
21

22 Phillip Brooks
23 Director, Air Enforcement Division
24 U.S. Environmental Protection Agency
25 Attn: Shaun Burke, Room 2119B
26 William Jefferson Clinton Building South
27 1200 Pennsylvania Ave. NW
28 Washington, D.C. 20004

When submitting documents through the U.S. Mail (do not send electronic media –
the x-ray machine will destroy it):

1 Phillip Brooks
2 Director, Air Enforcement Division
3 U.S. Environmental Protection Agency
4 Attn: Shaun Burke, Room 2119B
5 William Jefferson Clinton Building South
6 1200 Pennsylvania Ave. NW
7 Washington, D.C. 20460”

8 **AMENDMENTS TO APPENDIX A TO CONSENT DECREE:**

9 **TEST-AND-SET PROTOCOL FOR NOX EMISSION LIMIT**

10
11 **AMENDMENT TO SECTION I: SCOPE AND APPLICABILITY**

12 6. Paragraph 1 of Section I of Appendix A is amended and superseded to read as
13 follows:
14

- 15 1. If the Defendant does not install Catalytic Filter Bags, or elects to forgo use of
16 the Catalytic Filter Bags pursuant to 11.d. and e., then the Defendant shall
17 comply with the requirements contained in this Appendix A regarding
18 installation and optimization of selective non-catalytic reduction technology
19 (“SNCR”) and, if necessary, Low NO_x Burners (“LNB”) in establishing 30-
20 Day Rolling Average Emission Limits for NO_x for Kiln 1 and Kiln 2 at the
21 Facility. If the Defendant installs Catalytic Filter Bags then only Section II
22 and Section III of this Appendix applies.
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1 **AMENDMENT TO SECTION II: CEMS INSTALLATION AND OPERATION**

2 7. Paragraph 2 of Section II of Appendix A is amended and superseded to read as
3 follows:

- 4 2. Defendant shall install an Ammonia CEMS on Kilns 1 and 2 in conjunction
5 with the installation of the NO_x CEMS pursuant to Paragraph II.1 of this
6 Appendix. The Ammonia CEMS shall be operated whenever the NO_x CEMS
7 is used during baseline testing and the test-and-set processes, as applicable.
8
9

10 **AMENDMENT TO SECTION III: BASELINE COLLETION PERIOD**

11 8. Paragraph 2 of Section III of Appendix A is amended and superseded to read as
12 follows:

- 13 2. The Baseline Collection Period shall begin within 30 days after installation of
14 Ammonia CEMS and certified NO_x CEMS on each Kiln. The duration of the
15 Baseline Collection Period shall last for either 90 Days, if Defendant elects to
16 install Catalytic Filter Bags with ammonia injection, or 120 Operating Days if
17 Defendant elects to install SNCR, and be undertaken during periods of Kiln
18 Operation.
19
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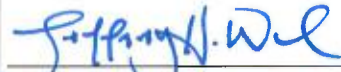
24 Dated and entered this 30th Day of October, 2018.

25 

26 UNITED STATES DISTRICT COURT JUDGE
27 District of Nevada
28

1 **Signature Page to the First Amendment to the Consent Decree in *United States v. Nevada***
2 ***Cement Company***

3 FOR PLAINTIFF UNITED STATES OF AMERICA:

4 

5 Date: 8/10/18

6 JEFFREY H. WOOD

7 Acting Assistant Attorney General
8 Environment and Natural Resources
9 Division

10 United States Department of Justice

11 

12 Date: 8/15/18

13 DAVID L. McILWAIN

14 Trial Attorney
15 Environmental Enforcement Section
16 Environment and Natural Resources Division
17 United States Department of Justice

18 P.O. Box 7611

19 Washington, D.C. 20044-7611

20 (202) 514-1544 (Tel.)

21 (202) 514-0097 (Fax)

22 David.McIlwain@usdoj.gov

1 **Signature Page to the First Amendment to the Consent Decree in *United States v. Nevada***
2 ***Cement Company***

3 FOR PLAINTIFF UNITED STATES OF AMERICA:

4 DAYLE ELIESON
5 United States Attorney, District of Nevada

6
7 s/ Greg Addington
8 GREG ADDINGTON
9 Assistant United States Attorney
10 U.S. Attorney's Office
11 400 South Virginia Street
12 Suite 900
13 Reno, Nevada 89501
14 (775) 784-5438
15 Greg.Addington@usdoj.gov

Date: 14 August 2018

1 **Signature Page to the First Amendment to the Consent Decree in *United States v. Nevada***
2 ***Cement Company***

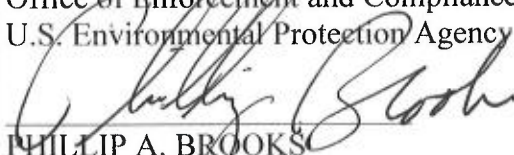
3 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

4 

5 ROSEMARIE A. KELLEY

6 Director, Office of Civil Enforcement
7 Office of Enforcement and Compliance Assurance
8 U.S. Environmental Protection Agency

Date: 7/26/18

9 

10 PHILLIP A. BROOKS

11 Director, Air Enforcement Division
12 Office of Enforcement and Compliance Assurance
13 United States Environmental Protection Agency

Date: 7/18/18

14 


15 ROBERT G. KLEPP

16 Attorney, Air Enforcement Division
17 Office of Enforcement and Compliance Assurance
18 United States Environmental Protection Agency


Date: 7/11/18

1 **Signature Page to the First Amendment to the Consent Decree in *United States v. Nevada***
2 ***Cement Company***

3 FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY
4 REGION 9:
5
6

7 
8 ~~MICHAEL STOKER~~ *Deborah Jordan*
9 ~~Regional Administrator~~ *Acting Regional Administrator*
10 U.S. Environmental Protection Agency, Region 9
11 75 Hawthorne Street
12 San Francisco, California 94105

Date: 7/16/18

13 
14 DAVID KIM
15 Attorney
16 Office of Regional Counsel

Date: 7/11/18

1 **Signature Page to the First Amendment to the Consent Decree in *United States v. Nevada***
2 ***Cement Company***

3
4 FOR DEFENDANT NEVADA
5 CEMENT COMPANY:

6 

Date: 7-9-18

7 Ben Bufmack
8 President
9 Nevada Cement Company
10 I-80 at Exit 46. P.O. Box 840.
11 Fernley, NV 89408-0840

12 The following is the name and address of Defendant Nevada Cement Company's agent for service
13 pursuant to Paragraph 106.

14 Ben Bufmack
15 President
16 Nevada Cement Company
17 I-80 at Exit 46. P.O. Box 840.
18 Fernley, NV 89408-0840
19
20
21
22
23
24
25
26
27
28